FILED
SEP 18 1972
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1579

OTIS L. BROWN, et al.,
Petitioners,

vs.

VIVIAN WOOLFOLK, et al.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

Brief of the State of California as Amicus Curiae in Support of the Petition for Certiorari

EVELLE J. YOUNGER
Attorney General of the State of California

ELIZABETH PALMER
Assistant Attorney General

JOHN J. KLEE, JR.
Deputy Attorney General

6000 State Building
San Francisco, California 94102
Telephone: (415) 557-3611

Attorneys for Amicus Curiae

SORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

SUBJECT INDEX

	Page
Interest of Amicus Curiae	1
Whether Congress Has Preempted the Field of Work Rules Presents a Substantial Federal Question	3
Conclusion	6

TABLE OF AUTHORITIES CITED

Page

Cases

Brian et al. v. CWRO et al. (DC, CD Cal. Civil No. 72-1278-F) 2

Bueno v. Juran (D.C. Ore. # 71-420) ..... F. Supp. ..... (dec. May 24, 1972) 2

Jefferson v. Hackney, ... U.S. ..... (1972) 3

Mintz v. Baldwin, 289 U.S. 346 (1933) 3

Schwartz v. Texas, 344 U.S. 199 (1952) 3

Statutes

42 U.S.C.A.:

§§ 601 et seq. 2

§§ 630 et seq. 2

§ 633 5

PL 92-223 4

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1579

OTIS L. BROWN, et al.,
Petitioners,
vs.
VIVIAN WOOLFOLK, et al.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

Brief of the State of California as Amicus Curiae in Support of the Petition for Certiorari

INTEREST OF AMICUS CURIAE

This amicus curiae brief, which is sponsored by the Attorney General of the State of California, is submitted by the State of California on behalf of the California State Department of Human Resources Development and the California State Department of Social Welfare. The brief is submitted in support of the contention that a substantial federal question is presented by the petition for certiorari.

California, like Virgina and all the other states of the Union, participates in the partially federally funded welfare program entitled Aid for Families with Dependent

Children (AFDC) established by sections 401 et seq. of the Social Security Act (42 U.S.C.A. §§ 601 et seq.). A part of the AFDC program is the Work Incentive Program (WIN) established by sections 430 et seq. of the Social Security Act (42 U.S.C.A. §§ 630 et seq.). As an alternate rationale for invalidating the Virginia Work Rule in this case, the Court of Appeal concluded that " . . . by adoption of the Work Incentive Program Congress intended to preempt work rules for those in the federally assisted AFDC category. . . ." That far-reaching statement (which went far beyond that necessary to decide the case) is playing havoc with AFDC programs throughout the Nation and threatens to do so in California.

Relying on that broad statement, the federal district court in Oregon has invalidated a state rule which required employable AFDC fathers for whom there was not any available positions in WIN to accept employment. *Bueno v. Juran* (D.C. Ore. # 71-420) ..... F. Supp. ..... (dec. May 24, 1972).

In quick pursuit, a three-judge federal court in New York cited *Woolfolk* and *Bueno* and held invalid the New York rule which required employable AFDC recipients to pick up their welfare checks at the local employment office as part of the New York job-search requirement.

California has a program called Community Work Experience Programs (CWEP), which is a project designed to give job training and work experience opportunities to those employable AFDC recipients for whom there is no available opening in WIN or other manpower training program. There is pending in California the case of *Brian et al. v. CWRO et al.* (DC, CD Cal. Civil No. 72-1278-F) in which the validity of CWEP is at issue. We are told that the preemption holding of *Woolfolk* and its progeny will play a major role in the attempt to invalidate CWEP.

Thus, the alternative preemption holding of the Court of Appeals in this case has mushroomed and become the cornerstone of decisions invalidating Oregon and New York programs as well as threatening the viable employment oriented program now going on in California.

WHETHER CONGRESS HAS PREEMPTED THE FIELD OF WORK RULES PRESENTS A SUBSTANTIAL FEDERAL QUESTION

As indicated previously, the portion of the decision of the Court of Appeals in this case which is causing concern is the broad holding that Congress, by the enactment of the WIN provisions, intended to "preempt work rules for those in the federally assisted AFDC category." The validity of that conclusion presents a substantial federal question.

Initially, we point out the obvious, namely, that nothing enacted by Congress in the WIN provisions themselves or in any other statute expressly prohibits States from having rules which contain work or job-search requirements. Any federal prohibition, then, must arise by implication.

Congressional prohibition by implication is not lightly assumed. Congressional intent to preempt a field of law must be clearly and unequivocally shown. *Schwartz v. Texas,* 344 U.S. 199, 202 (1952). As stated by this Court in *Mintz v. Baldwin,* 289 U.S. 346, 350 (1933),

> "The purpose of Congress to supersede or exclude state action . . . is not lightly to be inferred. The intention so to do must definitely and clearly appear."

That general rule has direct application to the federal categorical aid programs, including the AFDC program. In *Jefferson v. Hackney,* ..... U.S. ..... (1972), this Court stated just last May that state provisions dealing with AFDC programs will not be declared invalid unless they violate a specific provision of the Constitution or the Social Security Act.

There is no clear intent to preempt state work rules evidenced by Congress in the WIN provisions. The Court of Appeal's conclusion to the contrary is based on a complete failure to perceive the WIN program in the context of its operation as funded by Congress.

The WIN program is not now, nor has it ever been, a program which offered job training or public employment to *all* employable AFDC recipients. Earlier this year, there were over 122,000 employable AFDC recipients in California. Yet there were only 18,000 WIN slots available in California. The situation was similar throughout the United States. It defies common sense to conclude that Congress, when it adopted provisions funding work and training oportunities for 18,000 employable AFDC recipients in California, intended to impliedly prohibit California from having any work or job-search requirements for the remaining 104,000 employable AFDC recipients.

The Court of Appeals, as well as the district court, appear impressed by the complete and comprehensive nature of the WIN provisions. Again the Court missed the point. Of course the WIN provisions are comprehensive. But they are only comprehensive as to those recipients for whom there are positions available in the program. The extensive WIN provisions dealing with job training, counseling and sanctions could only have application to those involved in the WIN program. It does not make sense to conclude that when Congress enacted comprehensive provisions which have a practical effect on only a small portion of the employable AFDC recipients in the State, that it intended to prohibit the State from having any work rules at all which apply to the remaining employable recipients.

Moreover, the recent amendments to the WIN program made in 1971 by the "Talmadge Amendments" (PL 92-223) make clear that Congress understands that the WIN pro-

gram is not all-encompassing. As amended, Section 433 of the Act (42 U.S.C.A. § 633) provides for priorities in the carrying out of the WIN program. Thus, in filling vacancies in the WIN program, the State is directed to give priority to unemployed fathers, volunteer mothers, other mothers, dependent children and others in that order. By recognizing the need for placement priorities for participation in the WIN program, Congress recognized that there would not be sufficient facilities in this program for all employable AFDC recipients.

As alluded to earlier, we believe the Court of Appeals went further than necessary in order to decide the case in favor of the plaintiffs. In the present case, the localities in which the plaintiffs resided were participating in the WIN program and there were vacancies in the program. However, the plaintiffs had been determined to be "inappropriate" for referral to WIN. Nevertheless, under the Virginia Work Rule, a recipient who was not appropriate for referral to WIN was required to accept employment, if offered. It is possible to reason that Congress, in enacting the WIN provisions, established, in effect, a distinction between employable AFDC recipients and unemployable AFDC recipients. It would not be unreasonable to conclude that Congress intended to prohibit the States from applying work rules to those who are unemployable under the congressionally established guidelines. But that is entirely different from concluding, as did the Court of Appeals, that Congress intended to prohibit work rules for all AFDC recipients, including those who are employable under the federal standard.

We submit that the broad holding of the Court of Appeals that Congress has preempted *all* State work rules for *all* employable AFDC recipients is wrong and, at the very least, presents a substantial federal question upon

which this Court should express its opinion, particularly in view of the fact that lower courts are blindly applying that broad statement to factual situations not at all analogous to that present here.

CONCLUSION

The problem of getting employable welfare recipients job ready, job oriented and into actual employment is one of the major problems facing our society today. It is a problem that is currently being wrestled with by Congress as well as various state legislatures and welfare departments. The holding of the Court of Appeals in this case that Congress has impliedly prohibited the States from implementing programs to supplement WIN and other limited federal manpower training programs, effectively prohibits the States from trying to solve that important problem. The validity of that decision is open to serious question and presents one of the most significant substantial federal questions to come to this Court in a long time.

We urge the Court to grant the petition for certiorari.

Respectfully submitted,

EVELLE J. YOUNGER
Attorney General of the State of California
ELIZABETH PALMER
Assistant Attorney General
JOHN J. KLEE, JR.
Deputy Attorney General
Attorneys for Amicus Curiae